

BakerHostetler

Baker&Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

Nicholas J. Cremona
direct dial: 212.589.4682
ncremona@bakerlaw.com

July 9, 2020

VIA ECF

The Honorable Stuart M. Bernstein
United States Bankruptcy Judge
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: Picard v. Philip F. Palmedo, Adv. Pro. No. 10-04749

Dear Judge Bernstein:

We are counsel to Irving H. Picard, trustee (the “Trustee”) for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–lll. We write to advise Your Honor of the status of the above-referenced proceeding (the “Palmedo Action”).

Discovery closed in the Palmedo Action on December 16, 2019. On February 28, 2020, Defendant Philip F. Palmedo filed a motion to withdraw the reference arguing this Court lacked equitable jurisdiction to determine the Trustee’s claims because defendants maintained their right to a jury trial. Palmedo Action, ECF No. 86. The Palmedo Action was assigned to District Judge Paul G. Gardephe in district court. As no customer claims were filed in the Palmedo Action, the Trustee intended to consent to withdrawal of the automatic reference to the bankruptcy court.

On March 18, 2020, the Trustee filed a letter consenting to withdrawal of the reference and indicating the Trustee’s intent to file a motion for summary judgment. *Picard v. Philip F. Palmedo*, No. 20-cv-01926 (PGG) (S.D.N.Y. March 18, 2020), ECF No. 3. On July 8, 2020, Judge Gardephe denied the motion to withdraw as “premature,” finding the case not to be “trial-ready” given the Trustee’s forthcoming motion for summary judgment. Order, *Palemdo*, No. 20-cv-01926 (PGG) (S.D.N.Y. July 8, 2020), ECF No. 5 (attached as Exhibit A) (citing *Pryor v. Tromba*, No. 13- CV-676 JFB, 2014 WL 1355623, at *8 (E.D.N.Y. Apr. 7, 2014) (“[N]othing in

July 9, 2020

Page 2

defendant's papers suggests that the proceeding is at the pre-trial stage. Rather, two motions for summary judgment are pending. . . ."). Instead, Judge Gardephe referred the Palmedo Action to this Court for proposed findings of fact and conclusions of law on the anticipated summary judgment motion. *Id.* (citing *In re Ne. Indus. Dev. Corp.*, 511 B.R. 51, 53-54 (S.D.N.Y. 2014) ("The Bankruptcy Court may hear the case in the first instance and recommend proposed findings of fact and conclusions of law for final adjudication in the District Court. . . . The Bankruptcy Court's resolution of any motion for summary judgment . . . will be very useful to the District Court. . . .") (internal citations omitted)).

Given Judge Gardephe's Order, the Trustee requests that the Court schedule the Palmedo Action for a Rule 7056-1(a) pre-motion conference on July 29, 2020.

Respectfully submitted,

/s/ Nicholas J. Cremona

Nicholas J. Cremona
Partner

Enclosures

cc: (via email)
Helen Davis Chaitman